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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. GREGORY PETER VIDALES, Defendant and Appellant.	G026754 (Super. Ct. No. 99CF1645) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Daniel J. Didier, Judge. Affirmed.

Scott M. Rand, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Rhonda L. Cartwright-Ladendorf, Deputy Attorney General, for Plaintiff and Respondent.

* * *

Gregory Peter Vidales pleaded guilty to various narcotics offenses after the superior court denied his motion to suppress the evidence recovered during a warrantless search of his vehicle. He complains the officer's conduct exceeded the scope of the consent to search. We disagree and affirm.

I

Early on the afternoon of July 1, 1999, Orange County Sheriff's Deputy Claudia Black saw a white Ford Taurus, driven by defendant, entering the Garden Grove freeway on-ramp at Bristol Street. Noting some equipment violations (a cracked taillight and a partially obscured license registration tag), Black pulled the car over and requested the driver's registration, proof of insurance, and license.

Identifying himself as "Arturo Ponce," Vidales provided the first two items but claimed he left his license at home. He also provided an address and date of birth. Black returned to her patrol unit and called in a records check on the name and the car. At Black's request, Vidales left his car and waited near the police cruiser. He consented to a patdown search, but no wallet or other form of identification was found on his person. While Black waited for information on the records check, her partner, Deputy Steve Taylor, and another officer arrived as backup. Based on the information provided, the officers were unable to confirm Vidales's identity.

Black explained she had been unable to verify Vidales's licensing status and asked if "he minded if I looked through his vehicle for any kind of identification or wallet or anything that had his name on it." He told Black "it would be all right if [she] looked." Black also asked if he "kept his I.D. in the trunk and if I could look in there also, and he said I could look in there but [he] didn't have a key for the trunk."

Black commenced a search of the car, starting with the glove box and moving to the area underneath the front seats. When she looked in the rear passenger compartment, she noticed the "back seat was lose [*sic*] and it was actually pushed out a little bit from the back." Black pushed up on the seat; some "zigzag" rolling papers and a

plastic baggie came into view. Based on her training and experience, Black knew these items were commonly used in the packaging and use of marijuana.

Black took the keys to the rear of the car and tried to open the trunk. At that point, Vidales volunteered "he didn't have a key for the trunk." Black leaned inside the car and pulled the rear seat forward, exposing the trunk compartment. Deputy Taylor retrieved a flashlight and started a search. He pulled a brown paper bag out of the wheel-well area and handed it to Black. Inside the bag, Black found "a fairly large amount of powdery, rocky substance packaged separately and wrapped in clear wrap." Four smaller baggies contained "a yellow powdery substance."

Taylor also found a green backpack inside the trunk compartment. The backpack contained some empty plastic baggies and some DMV paperwork, including an order suspending a license issued to one Gregory Vidales. Vidales admitted the backpack and paperwork was his. Asked why he provided a false name, he responded there were warrants out for his arrest.

II

We turn to the issue of whether the scope of Vidales's consent to search included the trunk.[1] It is well-settled that law enforcement officers may rely on consent as the basis for a warrantless search, but they have no more authority than that granted by the scope of the consent. (*People v. Superior Court (Arketa)* (1970) 10 Cal.App.3d 122, 127.)

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[1] The search cannot be justified as a limited warrantless search for identification pursuant to Vehicle Code sections 4462, subdivision (a), and 12951, subdivision (b), which require drivers to present license and registration to peace officers on demand. In *In re Arturo D.* (2002) 27 Cal.4th 60, our Supreme Court explained "the trunk of a car is *not* a location where required documentation reasonably would be expected to be found, *absent specific information known to the officer* indicating the trunk as a location where such documents reasonably may be expected to be found — e.g., as when a driver has told an officer that his registration or license is inside a jacket located in the trunk." (*Id.* at p. 86, fn. 25, italics added.)

As the Attorney General correctly notes, the investigating officer obtained Vidales's consent to search the trunk for "*any kind* of identification or wallet or *anything that had his name on it*." (Italics added.) Defendant did not place any specific limitations on the scope of the search. As *Florida v. Jimeno* (1991) 500 U.S. 248 explains, the scope of a consent to search is governed by an objective standard, i.e., how would a reasonable person interpret the exchange between the officer and the suspect giving consent. (*Id.*at p. 251.)

Vidales notes this was not a narcotics case, and his consent to search the trunk for "identification" documents could not reasonably include the removal of the rear seat, or police review of the contents of a paper bag tucked inside the wheel-well of the trunk. Not so. Vidales never claimed it was impossible to open the trunk. Explaining he did not have a key, Vidales told the officers they were free to look inside the trunk.[2]

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[2] In *United States v. Patacchia* (9th Cir. 1979) 602 F.2d 218 (*Patacchia*), the defendant was stopped at the San Clemente border checkpoint along the Interstate 5 Freeway. Noting the vehicle was the type used to smuggle aliens, border patrol agents requested identification and asked if he could open the trunk. Defendant was "obliging" but claimed the electric release mechanism was inoperative. He also claimed some body damage prevented him from opening the trunk and informed the officers he did not have a trunk key. Defendant eventually grew impatient, and asked for his identification papers and permission to leave. (The opinion does not discuss the issue in these terms, but the defendant's remarks could easily be construed as a withdrawal of his consent to search.) Suspicious, the officers placed defendant in a patrol car and pried the trunk open just wide enough to detect the odor of marijuana. Seventy-five pounds of the drug and a weighing scale were found inside the trunk. Defendant's passenger was carrying in excess of $2,000 in cash and a key to the trunk.

On the issue of consent, the Ninth Circuit noted "These facts do not evidence consent to search the trunk. It is true that [defendant] indicated a willingness to open the trunk when asked to do so; but his response was qualified. He could not open it, he said, because of the inoperative release switch, the damage to the rear of the car, and the absence of a trunk key. The response, 'I would but I can't' is not the equivalent of 'Yes, you may open it if you can.'" (*United States v. Patacchia, supra,* 602 F.2d at p. 219; but see *United States v. Maynes-Ortega* (10th Cir. 1988) 857 F.2d 686 [defendant consented to search of trunk and claimed he did not have the key, but officers were able to see and use key in plain view between front seats].)

Implicit in that statement, we think, is the notion that the officers were free to look inside the trunk, *if they could get it open*.

Here, the undisputed facts show the police were able to access the trunk with no damage to the vehicle. The investigating officer noticed the rear seat was already loose and could be removed, allowing easy access to the trunk compartment. There was no evidence the rear seat was " mutilated, rendered useless or otherwise damaged, during the process of removal . . . . " (*People v. Crenshaw* (1992) 9 Cal.App.4th 1403, 1415.) At the same time, Vidales's failure to "object to or express any concern about the officer's activities," i.e., the removal of the already disengaged rear seat, shows he did not attempt to limit or retract his consent. (*United States v. Pena* (10th Cir. 1990) 920 F.2d 1509, 1515.) There are no grounds for reversal on this point.

Moving on to the search of the paper bag found inside the trunk, we reach the same conclusion. Per *Florida v. Jimeno, supra,* 500 U.S. 248, consent to search the trunk of a car authorizes law enforcement officers to open closed containers found within the trunk of that vehicle, e.g., paper bags, which might reasonably contain the object of

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Because Vidales – again, at least implicitly – agreed that the officers could look in the trunk if they could get it open, *Patacchia* does not aid his case. The question remains, then, as to how far law enforcement officers may go to access an area previously advertised as inaccessible. We know an officer may not engage in search activity which involves the destruction or mutilation of property. (*United States v. Strickland* (9th Cir. 1990) 902 F.2d 937 [general consent to search vehicle does not authorize officer to slash open spare tire]; *People v. Crenshaw, supra,* 9 Cal.App.4th at p. 1415.) Thus, an officer confronted with our factual scenario would not be free to cut the trunk open with a blowtorch or tear the rear seat apart to gain access to that area. *Patacchia* suggests prying open the trunk also goes too far. On the other hand, the use of a key, if one can be found, clearly passes muster. (*United States v. Maynes-Ortega, supra,* 857 F.2d 686.)

Our circumstances fall somewhere in between these two extremes. Vidales gave his consent to search the trunk. Taken together, that consent, along with the officer's ability to easily access that area, and the suspect's failure to challenge the removal of the rear seat, are enough to tip the balance in favor of the investigating officers.

the search.[3] Accordingly, it was not unreasonable for the investigating officers to think the consent to search the trunk also included authorization to search the contents of a paper bag found in that area. No Fourth Amendment violation occurred.

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

O'LEARY, J.

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[3] The court was careful to distinguish the facts of *State v. Wells* (1989) 539 So.2d 464. There, the Florida Supreme Court held consent to search the trunk of the car did not include consent to pry open a locked briefcase found inside the trunk: "It is very likely unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to the breaking open of a locked briefcase within the trunk, *but it is otherwise with respect to a closed paper bag*." (*Florida v. Jimeno, supra,* 500 U.S. at pp. 251-252, italics added.)